

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
)	
Federal-State Joint Board on)	
Universal Service)	CC Docket No. 96-45
)	
Petition by RSA 7 Limited)	DA 05-2711
Partnership, Iowa 8 - Monona)	
Limited Partnership, and Iowa)	
10 RSA General Partnership)	

REPLY COMMENTS OF MIDWEST WIRELESS IOWA, L.L.C.

Midwest Wireless Iowa, L.L.C. (“Midwest”) hereby replies to comments submitted by the Iowa Utilities Board (“IUB”) regarding the petition of RSA 7 Limited Partnership, Iowa 8 – Monona Limited Partnership, and Iowa RSA 10 General Partnership (“Iowa Petitioners”) for FCC concurrence in redefining the service areas of Iowa rural incumbent local exchange carriers (“LECs”) pursuant to Section 54.207(c) of the FCC’s rules (“Petition”).¹ As set forth below, Midwest supports the IUB’s competitively neutral approach in defining all wireless ETC’s service areas as their licensed service area, and encourages the FCC to recognize Iowa’s unique situation by granting its concurrence with the rule as a general matter.

I. BACKGROUND AND INTRODUCTION

¹ Petition of RSA 7 Limited Partnership, Iowa 8 – Monona Limited Partnership, and Iowa RSA 10 General Partnership, CC Docket No. 96-45 (filed Sept. 30, 2005) (“Petition”).

Midwest is a wireless telecommunications company providing service throughout large portions of Iowa pursuant to FCC cellular authorizations in Iowa RSA No. 3 - Monroe, Iowa RSA No. 6 - Iowa, Iowa RSA No. 11 - Hardin, Iowa RSA No.12 - Winneshiek, Iowa RSA No. 13 - Mitchell, Iowa RSA No.14 -Kossuth, Iowa RSA No. 15 - Dickinson, and the northern portion of Iowa RSA No. 16 - Lyon. On July 12, 2002, the IUB designated Midwest as an ETC throughout its licensed service area, except for rural LEC service areas that were only partially covered by the requested ETC service area. In the latter areas, Midwest's designation is conditioned upon redefinition of the relevant service areas. As with the Iowa Petitioners, Midwest's request for ETC status was unopposed.

At least 20 wireless carriers, not including Midwest, have been designated as ETCs in Iowa. Taken together, their cellular and PCS authorizations cover the entire state. Although Midwest sought to have the IUB redefine only the rural LEC service areas affected by its ETC designation, the IUB took a broader approach. On August 25, 2003, the IUB commenced a rulemaking proceeding to consider a proposal to define "service area" as a wireless ETC's FCC-licensed service territory.² On May 24, 2004, the IUB issued an order adopting, *inter alia*, the proposal as a final rule ("Wireless Service Area Rule"). The new rule reads:

In the case of a wireless telecommunications carrier, "service area" means that area where the wireless company has been licensed by the FCC to provide service.

² See In re: Eligible Telecommunications Carrier Designation for Wireless Carriers [199 IAC 39.2], Docket No. RMU-03-13, Order Commencing Rule Making (issued Aug. 25, 2003) ("Order Commencing Rulemaking").

As a result of the Wireless Service Area Rule, every wireless carrier designated by the IUB, including Midwest, now has an ETC service area defined as its FCC-licensed service territory. For wireless ETCs whose service area covers only a portion of a rural LEC's service area, the only remaining step is to obtain FCC concurrence.³

II. DISCUSSION

A. The Wireless Service Area Rule Is Suited to Iowa's Unique Situation.

As the IUB noted in its Comments on the Petition, the Wireless Service Area Rule is "specific to the unique requirements and characteristics of Iowa" and was developed

. . . [w]ith consideration to the large number of rural ILECs and the administrative issues that would arise from conducting a separate redefinition proceeding for every new wireless ETC applicant[.]⁴

Iowa is indeed unique. Based on the IUB's latest high-cost certification to USAC, there are 160 rural LECs in Iowa. This is by far the largest number of rural LECs in any state; no other state even comes close, the next highest totals belonging to Wisconsin (89) and Minnesota (85). Many of Iowa's rural LECs are telephone cooperatives serving small communities. Some of them, such as Iowa

³ In response to the adoption of the Wireless Service Area Rule, Midwest contacted IUB staff to determine whether a wireless ETC must obtain an additional order from the IUB redefining the underlying rural LEC service areas. Staff has advised Midwest that the Wireless Service Area Rule accomplishes such redefinition, and that no further redefinition by the IUB is needed before a wireless ETC proceeds with obtaining FCC concurrence.

⁴ IUB Comments at p. 2, n.2.

Telecommunications Services d/b/a Iowa Telecom, have wire centers scattered throughout the state in such a manner that no wireless licensee could hope to cover them all without covering the entire state.

In developing the Wireless Service Area Rule, the IUB was properly concerned about the administrative deluge that would result from each wireless ETC separately seeking redefinition of areas impacted by its individual designation. The IUB has designated no fewer than 20 wireless ETCs in Iowa, with large, small, and often overlapping cellular and PCS licensed service territories. Many of the same rural LEC service areas would be implicated in multiple redefinition requests, with different cream-skimming analyses for carriers serving various configurations of wire centers within the same study areas. The IUB's one-step solution recognizes that it would be futile to examine the potential for cream-skimming in connection with one carrier's request, when several other wireless ETCs may serve different portions of the same study area.⁵ Because of these broader implications, the IUB properly declined to address redefinition in the individual orders as it sought a more administratively workable approach that fits Iowa's unique situation.

B. The IUB Properly Considered Cream-Skimming in Adopting the Wireless Service Area Rule.

The IUB's Wireless Service Area Rule originated in the IUB's attempt to find a pro-consumer, competitively neutral way to define a wireless ETC's service area while addressing cream-skimming concerns. On July 20, 2003, then-IUB member

⁵ See discussion in Section (C), *infra*.

Elliott Smith submitted a filing to the FCC advocating, *inter alia*, the use of FCC-licensed boundaries for wireless ETCs' service areas. Specifically, Mr. Smith stated:

In Iowa, defined wireline exchange boundaries have evolved over decades based on the ownership of telecommunications facilities and the location of the customers receiving service. The exchanges are irregular in shape and do not follow county, municipal, or section lines.
..

In contrast, wireless service areas are set by the [FCC] and are based on county lines. Wireless and wireline service areas do not correspond with each other. Often, wireless service providers cannot cover entire wireline exchanges, let alone study areas, because of the irregular shape of the wireline exchanges and the limitations of county-by-county licensing. This difference in service area is not something the wireless carrier has chosen; rather it is an outcome of the FCC's licensing practices. ***Because it is not the result of the carrier's decision, it does not appear to raise the same concerns related to cream skimming.*** [Emphasis added.]⁶

The IUB's Order Commencing Rulemaking similarly noted that "the service area differences are the result of FCC licensing requirements and do not appear to present any significant cream-skimming concerns."⁷

In sum, it is clear that the IUB fully considered cream-skimming and properly determined that none would result from its Wireless Service Area rule. Accordingly, the IUB's proposed redefinition satisfies the requirement under the FCC's rules that a redefinition proposal include the state's analysis under the Joint Board's recommendations, including cream-skimming.⁸

⁶ A copy of Mr. Smith's submission is attached hereto for the Commission's reference.

⁷ Order Commencing Rulemaking at p. 2.

⁸ 47 C.F.R. § 54.207(c)(1)(ii).

C. There is No Possibility of Cream-Skimming in Iowa, Where At Least Twenty Wireless ETCs Combine to Cover All LEC Study Areas.

Properly understood, *Virginia Cellular*⁹ and *Highland Cellular*¹⁰ stand for the proposition that the FCC is concerned with a rural LEC having competition throughout its study area, not just in its low-cost areas which, presumably, are the most lucrative portions.¹¹ Should the FCC grant its concurrence with the proposed redefinition embodied in the IUB's Wireless Service Area Rule, Iowa's rural LECs will have just that. With more than 20 wireless ETCs in Iowa, there is at least one competitive ETC designated in any given area throughout the entire state of Iowa, meaning that every rural ILEC now faces competition throughout its entire study area. Thus, rural ILECs would have no basis on which to claim that any cream-skimming, or effect of cream-skimming, problem exists for them. Even if it could be shown that a particular wireless ETC can serve only the low-cost portions of a given rural LEC, cream-skimming concerns are mooted because there exists at least one other wireless ETC that has been designated to serve the remaining portions of the study area.

D. The Washington Commission's Solution Provides Direct Precedent For FCC Concurrence In This Case.

⁹ *Virginia Cellular, LLC*, 19 FCC Rcd 1563 (2004) ("*Virginia Cellular*").

¹⁰ *Highland Cellular, Inc.*, 19 FCC Rcd 6422 (2004) ("*Highland Cellular*").

¹¹ *See id.* at 6438 ("We believe that requiring a competitive ETC to serve entire communities will make it less likely that the competitor will relinquish its ETC designation at a later date. Because consumers in rural areas tend to have fewer competitive alternatives than consumers in urban areas, such consumers are more vulnerable to carriers relinquishing ETC designation.")

In 1999, the FCC granted its concurrence with a proposal by the Washington Utilities and Transportation Commission (“WUTC”) to redefine the service areas of all rural LECs so that each wire center is a separate service area.¹² Noting that it had “made ETC designations as part of its efforts to bring competition to all parts of Washington,”¹³ the WUTC emphasized that “[s]maller, rather than larger, service area designations for ETCs promote competition and speed deregulation.”¹⁴

The FCC’s concurrence with the WUTC’s proposal to redefine all rural LEC service areas along wire-center boundaries has opened up opportunities for competitors to enter as ETCs without the need to go through individual service area redefinition proceedings. As a result, Washington does not suffer from the protracted litigation that delays ETC designations at the FCC and across the country. Nearly six years later, the WUTC underlined the success of its decision:

The Commission’s experience is that this approach, if not benefiting customers (which it does), certainly is not failing customers. In the five years since we first designated an additional ETC in areas served by rural telephone companies, the Commission has received only two customer complaints in which the consumers alleged that a *non*-rural, wireline ETC was not providing service. No Rural ILEC has requested an increase in revenue requirements based on need occasioned by

¹² *Petition for Agreement with Designation of Rural Company Eligible Telecommunications Carrier Service Areas and for Approval of the Use of Disaggregation of Study Areas for the Purpose of Distributing Portable Federal Universal Service Support, Memorandum Opinion and Order*, 15 FCC Rcd 9924 (1999).

¹³ Wash. Util. & Transp. Comm’n, *Petition For Agreement With Designation of Rural Company Eligible Telecommunications Carrier Service Areas At The Exchange Level And For Approval Of The Use Of Disaggregation Of Study Areas For The Purpose of Distributing Portable Federal Universal Service Support*, CC Docket No. 96-45 (filed Aug. 17, 1998) (“WUTC Petition”) at p. 8.

¹⁴ *Id.* at p. 9.

competition from wireless or other ETCs.”) (emphasis in original).¹⁵

The IUB’s proposal is substantially similar to the WUTC’s, in that it seeks a single, competitively neutral solution promote competitive entry in rural areas and to eliminate the delay and expense of individual service area redefinitions at the state and FCC levels. The FCC should respect the IUB’s judgment “based on [the state commission’s] unique familiarity with the rural areas in question.”¹⁶

III. CONCLUSION

For the reasons set forth above, Midwest supports the competitively neutral policies embodied in IUB’s Wireless Service Area Rule and encourages the Commission to grant its concurrence by declining to open a proceeding.

Respectfully submitted,



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¹⁵ Sprint Corp. d/b/a Sprint PCS et al., Docket No. UT-043120 at p. 11 (Wash. Util. and Transp. Comm’n, Jan. 13, 2005).

¹⁶ *Virginia Cellular, supra*, 19 FCC Red at 1582.